

W1-119

AGREEMENT

This Agreement is made this 22^d day of December, 1992, between the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation in Wisconsin, a recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. Section 476, (hereinafter "Tribe"), and Lakehead Pipe Line Company, Limited Partnership, successor in interest to Lakehead Pipe Line Company, Inc. (hereinafter "Company").

WHEREAS in 1953, the Company acquired rights of way for a pipeline from the Secretary of Interior or from the Secretary's duly authorized representative (hereinafter "Secretary") over and across lands within and/or about the Bad River Reservation in Wisconsin (hereinafter "Reservation"), including lands in which the Tribe had a legal interest and including lands generally known as allotted lands (hereinafter "Original Rights of Way"), for a period of twenty (20) years; and

WHEREAS, pursuant to such authorization, the Company constructed a 30-inch pipeline across the Original Rights of Way and other lands; and

WHEREAS, that portion of the Original Rights of Way in which the Tribe now has a legal interest and any other land through which such pipeline was constructed which is subject to rights of way of the Company in which the Tribe now has a legal interest are hereinafter collectively referred to as the "Existing Rights of Way"; and

WHEREAS, on July 21, 1975, the Company acquired from the Secretary of the Interior or from the Secretary's duly authorized representative a (20) twenty year extension of said Original Grant of Rights of Way, commencing June 2, 1973, which grant will expire on June 2, 1993; and

WHEREAS, the Company and the Tribe have conducted negotiations for a new right of way agreement over the existing pipeline right of way.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Tribe and the Company agree as follows:

1. The Tribe agrees that:

a. The Secretary may grant to the Company a right of way for the construction, operation and maintenance of a pipeline for fifty (50) years within the Existing Right of Way. Said pipeline right of way shall be granted pursuant to and in accordance with the Tribal Council's Resolution Granting Pipeline Right Of Way, the form of which is attached and marked Exhibit "A". The consideration and damages to be paid by the Company for such pipeline operation and right of way and associated damages is the sum of Eight Hundred Thousand Dollars (\$800,000.00), which sum shall be paid as set forth herein.

b. The Tribe consents to a limited waiver of its sovereign immunity; such waiver is of any sovereign immunity the Tribe may have with respect to this Agreement, with respect to any dispute regarding this Agreement and with respect to enforcement of this Agreement and, such waiver is limited to suit brought in the

Federal District Court for the Western District of Wisconsin, and that no waiver or consent is granted to the enforcement of any judgment or judgments in an aggregate monetary amount of more than \$800,000.00.

c. The Tribe agrees that it shall not contest at any time in the future that 25 U.S.C. § 323 is not the appropriate authority for the granting of the pipeline right of way to the Company as set forth in Exhibit "A".

d. At the Time of Closing, the Tribe will deliver to the Company:

- (1) A certified copy of a written Tribal Council resolution which is fully executed and which is in the form of the Resolution Granting Consent To Rights Of Way which is attached and marked Exhibit "A".
- (2) A certified copy of a Written Tribal Council Resolution which is fully executed and which is in the form of the Resolution approving Agreement with Lakehead Pipe Line Company, Limited Partnership which is attached and marked Exhibit "B".
- (3) A written opinion of the attorney representing the Tribe with respect to this matter which states that: Assuming that the Tribe and the Company fulfill their obligations under this Settlement Agreement, then the Tribe is fully and legally committed to the following: to the terms of this Agreement; to the Tribe's above-described consent to the granting of the fifty (50) year

Grant of Right of Way to the Company; and, to waiver of any sovereign immunity the Tribe has with respect to this Agreement, with respect to any dispute regarding this Agreement and with respect to enforcement of this Agreement.

2. The Company agrees that:

a. At the Time of Closing, and after receipt of that which the Tribe is to deliver to the Company:

The Company will deliver to a bank of its choice (hereinafter "Bank") the sum of Eight Hundred Thousand Dollars (\$800,000.00) (hereinafter "Sum"), which Sum shall be held by the Bank in escrow. At the time the Company delivers the Sum to the Bank, the Company will instruct the Bank that when the Company receives the Grant of Right of Way from the Secretary, the Company shall instruct the Bank to pay the Sum plus any accrued interest to the Tribe. When the Company receives such Grant of Right of Way, it shall so instruct the Bank. Payment of the Sum to the Tribe shall be accomplished by delivery to Attorney David Siegler, or by delivery to his office at P. O. Box 39, Odanah, Wisconsin, of a certified check drawn on the Bank to the order of the Tribe in the amount of the Sum plus accrued interest.

3. The Tribe and the Company will do whatever they can reasonably do to ensure that all of the objectives of the Tribe and the Company, as those objectives are expressed in this Agreement,

are achieved, even if it means that one or both of the parties must do something which is not expressly described herein. One of the Company's objectives under this Agreement is to obtain from the Tribe all consents and authorizations it is possible for the Company to obtain, whether necessary or not to obtain a fifty (50) year easement for Right of Way for a pipeline over the Company's existing pipeline Right of Way in which the Tribe has an interest.

4. Closing will occur within fifteen (15) days of the date notice is received by the parties that the BIA will approve the fifty (50) year easement for Right of Way. Closing will take place at the office of the BIA in Ashland, Wisconsin.

5. This Agreement is binding on the Tribe and the Company and their successors and assigns.

6. In the event that the grant of the fifty (50) year Right of Way easement consented pursuant to this Agreement and pursuant to the Resolution of the Tribe as set forth in Exhibit "A" is not approved by the Secretary, the Tribe and the Company agree that the Tribe will enter into a twenty (20) year Right of Way Easement to the Company over the Existing Rights of Way in consideration of the Company paying to the Tribe the Sum of Four Hundred Fifty Thousand Dollars (\$450,000.00).

7. This Agreement shall be kept confidential and shall not be disclosed by the Tribe or the Company or their representatives to any persons or entities except as part of the Tribal approval process and except, in connection with a dispute relating to the Agreement or as may be required by law. It is anticipated that

Exhibits or documents which are substantially similar to those Exhibits, will be released to persons and entities other than the Tribe and the Company. It is understood that the Company or the Tribe may elect to file this Agreement with appropriate Indian title records.

BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS OF THE BAD RIVER RESERVATION IN WISCONSIN

By *Donald Moore, Sr.*
Donald Moore, Sr.
Chairman of Tribal Council

LAKEHEAD PIPE LINE COMPANY, LIMITED PARTNERSHIP
By LAKEHEAD PIPE LINE COMPANY, INC., as General Partner

By *George W. Moos*
Mgr. Right of Way

December 23, 1992